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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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RESPONSE TO
RESTRICTION REQUIREMENT

In Re the Application of:

GELFAND et al.

Serial No.: 09/672,865

Filed: September 28, 2000

Atty. File No.: 2879-68

For: "REGULATION OF $\gamma\delta$ T CELLS TO
REGULATE AIRWAY
HYPERRESPONSIVENESS"

Group Art Unit: 1632

Examiner: Li, Quan J.

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TYPED OR PRINTED NAME: KATHLEEN BUSSELL

SIGNATURE:

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This response is filed in response to a Restriction Requirement having a mailing date of May 7, 2002. Enclosed herewith is a Request for a two-month extension of time, to extend the time for responding from June 7, 2002 to August 7, 2002. No additional fees are believed to be due in connection with this response, but if fees are due, please debit Deposit Account No. 19-1970.

The Examiner has restricted the claims into thirteen groups as follows: Groups I-X are all directed to a method to reduce AHR by administering a particular agent to increase $\gamma\delta$ T cell activity, with the agent forming the basis for restriction as follows: Group I (Claims 1, 2, 4, 6, 7, 17-19, 22-33): a BiP binding motif; Group II (Claims 1, 2, 4, 6, 8, 17-19, 22-23): a glycosylated protein or peptide; Group III (Claims 1, 2, 4, 6, 9, 17-19, 22-33): polyGT or poly GAT; Group IV (Claims 1, 2, 4, 6, 10, 17-19, 22-33): a synthetic oligonucleotide; Group V (Claims 1, 2, 4, 6, 11, 17-19, 22-23): a mycobacterial peptide; Group VI (Claims 1, 2, 4, 6, 12, 17-19, 22-33): a *Listeria* cell wall product; Group VII (Claims 1, 2, 4, 6, 13, 17-19, 22-33): a cardiolipin; Group VIII (Claims 1, 2, 4, 6, 14, 17-19, 22-33): tumor necrosis factor α ; Group IX (Claims 1, 2, 4, 6, 15-19, 22-23): antibody to $\gamma\delta$ T cell receptors; and, Group X (Claims 1, 2, 4, 6, 17-33): antibody linked with a compound that activates the $\gamma\delta$ T cell. Group XI (Claims 1-6, 17-19, 22-33) is directed to a method to reduce AHR comprising inducing $\gamma\delta$ T cell proliferation *ex vivo*; Group XII (Claims 34 and 35) is directed to a method to identify a compound by an *in vitro* method; and Group XIII (Claim 34) is directed to a method to identify a compound by an *in vivo* method.

Applicants provisionally elect, with traverse, to prosecute the claims of Group VIII (Claims 1, 2, 4, 6, 14, 17-19, 22-33), wherein the agent is tumor necrosis factor α . The Restriction is traversed between all of Groups I-XI and between Groups XII and XIII.

With regard to Groups I-XI, the Patent Office may require restriction if two or more "independent and distinct" inventions are claimed in one application. However, "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." M.P.E.P. Section 803. Applicants submit that a thorough search for Group VIII should also include the subject matter of Groups I-VII and IX-XI. The Examiner states that the inventions are unrelated because the methods use different agents which do not share a substantial structural feature essential to a common utility. Applicants respond by asserting that although the agents are not structurally related, they have a common general functional relationship and are linked by Claims 1-6, 17-19 and 22-33. Indeed, Claims 1, 2, 4, 6, 17-19 and 22-33 are included in all of these groups as restricted by the Examiner, and Group XI is not restricted on the basis of the agent used. Therefore, it would not be an undue burden on the Examiner to search and examine all of the claims of Groups I-XI.

In any event, it is submitted that these linking or generic claims are directed to the activation of $\gamma\delta$ T cells for a novel result (reduction of AHR). The method, regardless of the agent used, has the same general steps, the same general mode of operation (induction of $\gamma\delta$ T cell activity to reduce AHR), and the same endpoint (reduction of AHR). If there are genus claims linking species, upon allowance of the linking claims, the restriction should be withdrawn. M.P.E.P. 809.03 Therefore, the Examiner is respectfully requested to withdraw the restriction between Groups I-XI.

With regard to the restriction between Groups XII and XIII, even though these groups were not elected, Applicants submit that this restriction is improper, because Claim 34, belonging to both groups *requires* that both the *in vitro* and *in vivo* parts be performed. Therefore, the Examiner is respectfully requested to withdraw this restriction.

Respectfully submitted,

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Date: August 7, 2002